IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 23RD FEBRUARY 2007 / 4TH PHALGUNA 1928

WP(C).No. 32431 OF 2006(S)

OP.665/2005 OF FAMILY COURT, ALAPPUZHA

PETITIONER:

HARI PRASAD, AGED 45 YEARS,
SON OF UNNIKRISHNAN NAIR, KOYIPURATH HOUSE,
MUTHUKULAM VADKKUM MURI, MUTHUKULAM VILLAGE,
MAVELIKARA.

BY ADV. SRI.BOBY MATHEW

RESPONDENTS:

1. SUDHA KUMARI, AGED 44 YEARS,
WIFE OF M.K.HARIDAS, AMBADIYIL HOUSE,
MUTHUKULAM VADAKKUM MURI, MUTHUKULAM VILLAGE,
MAVELIKARA.

2. PRASEETHA, AGED 24 YEARS,
DAUGHTER OF M.K.HARIDAS, AMBADIYIL HOUSE,
MUTHUKULAM VADAKKUM MURI, MUTHUKULAM VILLAGE,
MAVELIKARA.

3. PRAMOD DAS, AGED 22 YEARS,
SON OF M.K.HARIDAS, AMBADIYIL HOUSE,
MUTHUKULAM VADAKKUM MURI, MUTHUKULAM VILLAGE,
MAVELIKARA.

4. M.K.HARIDAS, AGED 46 YEARS,
SON OF MADHAVAN KUTTY, MULLASSERIL HOUSE,
KRISHNAPURAM MURI, KRISHNAPURAM VILLAGE,
MAVELIKARA.

BY ADV. SRI.RINNY STEPHEN
SRI.B.RENJITHKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 9/02/2007, THE COURT ON 23.2.2007, DELIVERED THE FOLLOWING:

WP(C) 32431/2006

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	TRUE COPY OF THE PLAINT IN O.S. NO. 22 OF 2002 INSTITUTED ON THE FILE OF THE SUB COURT, MAVELIKARA.

RESPONDENTS' EXHIBITS:

NIL.

// TRUE COPY //

P.S. TO JUDGE.

KNC/-

P.R. RAMAN & S. SIRI JAGAN, JJ.
= === == == == === == ==

W.P.(C) NO. 32431/2006
==== === == == =

DATED THIS, THE 23RD DAY OF FEBRUARY, 2007.

J U D G M E N T

Raman, J.

Petitioner is the second defendant in O.S. 22/2002 on the file of the Sub Court, Mavelikara. Respondents 1 to 3 herein are the plaintiffs in the said suit who are the wife and children of the 4th respondent,who is the first defendant in the suit.

2. According to the petitioner, he is a bona fide purchaser of an extent of 15 cents of property comprised in R.S. No. 420/24 - Block No. 16 (Old Sy. No. 3834) of Muthukulam Village, Karthikapally Taluk. According to him, the purchase was for valid consideration. The 4th respondent was the vendor. Respondents 1 to 3 herein instituted the suit inter alia seeking for a declaration of their right over plaint schedule properties, for a permanent prohibitory injunction from forcibly evicting or interfering with their peaceful life in the plaint schedule properties and from committing any waste therein. They also sought for a declaration that the

sale deed executed by the 4th respondent in favour of the petitioner is null and void and not binding on them. True copy of the plaint is produced as Ext.P1 in this writ petition.

3. In Ext.P1 plaint, it is alleged that the first plaintiff and the first defendant got married on 11.6.1980, that subsequent to the marriage they were residing in the plaint schedule property as husband and wife, that two children were also borne in that wedlock and while so the first defendant left for Bombay and thereafter to Abudabi, in 1991 and that he was not looking after the plaintiffs. It is also alleged that plaint schedule property was purchased in the name of the first defendant using the funds belonging to the first plaintiff, that the first defendant has neglected the plaintiff and the children and assaulted her, in respect of which a criminal case is pending, that thereafter, he has sold the plaint schedule property to the petitioner herein who is a relative of a lady, whom the first defendant is intending to marry. There are other allegations against the first defendant/husband.

4. After the constitution of the Family Court, the suit was transferred to the Family Court at Alapuzha and numbered as O.P. 665/2005. It is contended by the petitioner that the nature of the suit filed as O.S. 22/2002 and transferred to the Family court will not fall within the

ambit of Section 7(b) of the Family Courts Act, 1984 and as such, the family court has no jurisdiction and the suit be tried in the Sub Court, Mavelikara itself. He seeks for a direction to the Family Court, Alappuzha to send back O.P. 665/2005 on its file to the Sub Court, Mavelikara where it was originally pending and to pass such other orders as are deemed necessary in the case.

5. The point that arises for consideration is as to whether the transfer of the suit O.S. 22/2002 pending before the Sub Court, Mavelikara to the Family Court, Alapuzha and numbered as O. P. 665/2005 and pending consideration before the said Family Court now is liable to be re-transferred and whether the family court has jurisdiction under Section 7(b) of the Family Court Act to adjudicate the dispute arising between the parties in the nature of the pleadings contained in Ext.P1 plaint.

6. We have heard the parties.

7. As per Section 7 (1) of the Family Court Act, subject to the other provisions of the said Act, a Family Court shall have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation. As per Explanation (c) and (d) under clause (b) of Section 7(1) a suit or proceeding between the parties to a

marriage with respect to the property of the parties or of either of them and a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship are thus matters which falls within the jurisdiction of the family court. The plaintiffs have sought for declaration of title in respect of plaint schedule property besides an injunction against defendants 1 and 2 from forcibly evicting them from the plaint schedule property or interfering with their peaceful possession and enjoyment of the same. Except the petitioner herein, the suit or other proceedings are admittedly between the parties to the marriage and in respect of the property of the parties or either of them. The injunction sought for is also from the plaint schedule property in respect of which the plaintiffs claim absolute title.

8. The contention of the petitioner is that he being not a party to the marriage, a suit or other proceedings with him in the party array will fall outside the nature of the proceedings which could be tried by the family court.

9. In **Shyni v. George and Others** (1997(1) KLJ 573) this Court considered the question as to whether the family court has jurisdiction to entertain a suit filed by the wife against the husband and father in law for recovery of amounts given at the time of marriage and held that so long as the suit is by one spouse against the other, the suit would be maintainable in

the family court even if for the purpose of seeking relief in respect of the cause of action put forward in the suit, the suing spouse is forced to implead persons other than the other spouse including the close relatives of the other spouse. This Court held as follows:

> "On the scheme of the Act and considering the conferment of jurisdiction of the Family Court, it is clear that a suit or proceeding between the parties to a marriage with respect to the property of the parties or either of them comes within the purview of the Family court. When a wife sues her husband for recovery of her property or which she claim to be her property, obviously the suit could be tried and disposed of only by the Family Court and when in such a suit the wife is obliged to add a close relative of the husband or even a stranger on the allegation that the husband had made over the property to that close relative or stranger, it will be too much to hold that the jurisdiction of the Family Court is ousted to deal with the claim of the plaintiff in view of the mere presence of the stranger or the close relative of the husband. In such a situation, the close relative of the husband or the stranger could only be the agent of the husband or a confident of the husband holding the property claimed by the wife on behalf of the husband. It is not possible to accept the argument that in such a circumstance also the wife would be obliged to file the suit against the stranger in an ordinary civil court even while she is forced to maintain her suit against the husband in the Family Court."

10. The case on hand squarely falls on all fours with the said decision. We are in complete agreement with the view expressed by this court in the aforesaid decision. Though the learned counsel appearing for

the petitioner sought to distinguish the said decision placing reliance on a subsequent decision of this Court in **Devaki Antharjanam v. Narayanan Namboodiri & Another** (2006 KHC 655: ILR 2006(2) Ker. 663 : 2006(2) KLT 1022:2006(2) KLJ 861), we have carefully gone through the said decision and we do not find that the said decision will in any way help the petitioner to advance his contention. There is nothing in the said decision contrary to what has been held in the earlier decision of this Court in Shyni's case (1997(1) KLJ 573) .

11. As could be seen from the facts stated in **Devaki Antharjanam'**s case (2006 (2) KLT 1022), it was a case where a decree for partition of Illom properties was challenged by the first defendant. Admittedly, besides the husband and wife, there were other co-sharers to the properties. The subject matter of the suit belongs not only to the parties to the marriage, but to others also. A preliminary decree was passed and the plaint schedule property was allotted to plaintiff and defendants and each of them had one third share in the plaint schedule property. The preliminary decree was challenged in appeal unsuccessfully and a second appeal was preferred before this Court. It was the contention of the appellant that the preliminary decree and final decree are void in view of

Section 7 of the Family Courts Act. Reference was also made to the decision in **Krishnan Namboodiri v. Thankamani** (1994(1) KLT 607) wherein it was held that simply because among the parties a husband and wife are also arrayed on rival side that cannot attract clause (c) of Explanation to S.7(1) of the Act. As a matter of fact, the learned Judge has also referred to the decision in Shyni's case and followed the observations contained therein as respect to the suit for partition.

12. In Shyni 's case this court held that a partition suit in which a party to a marriage claims a share in the property not only along with her husband or as against her husband but also along with various other members of the joint family, would be totally different from a case where the wife files a suit for recovery of her exclusive property against her husband and someone else who is holding the property on her behalf or who is holding it in trust for her like the father-in-law in that case. This observation of this Court in Shyni's case was followed while deciding the case in Devaki Antharjanam's case (2006(2) KLT 1022).

13. On the other hand, the present case, merely because in the suit between the parties to the marriage, the petitioner is arrayed as an additional respondent, which the wife is obliged to do for obtaining effective relief in the suit, will not fall outside the jurisdiction of the

Family Court for that reason alone. As per Section 8 of the Family Courts Act, when a Family Court has been established, no other Court shall have or exercise any jurisdiction in respect of the matters referred to in the Explanation to Section 7(1) of the Act.

14. In the light of the foregoing discussions, we hold that in the light of clause (c) and (d) to Explanation C to Section 7(b) of the Family Court Act, and having due regard to the relief sought for in the plaint claim, the matter squarely falls within the jurisdiction of the Family Court.

We find no merit in the contention raised in this writ petition. The writ petition is accordingly dismissed.

P.R. RAMAN,
(JUDGE)

S. SIRI JAGAN,
(JUDGE)

knc/-